

**Prepared Statement of
the Federal Trade Commission
on**

**"Marketing Violent Entertainment to Children: Self-Regulation and
Industry Practices in the Video
Game Industry"**

June 14, 2006

I. Introduction

Mr. Chairman, Ranking Member Ms. Schakowsky, I am Lydia Parnes, Director of the Bureau of Consumer Protection at the Federal Trade Commission. I appreciate the opportunity to appear before you today to discuss the Commission's monitoring of the marketing of electronic games (commonly known as video games) to children under 17 and the serious concerns that some parents have about the marketing of some of these games.¹ Our monitoring plays an important role in encouraging industry to maintain active self-regulatory programs and in keeping the entertainment industry to its commitments.

¹ The views expressed in this written statement represent the views of the Commission. My oral statement and responses to questions you may have are my own and are not necessarily those of the Commission or any individual Commissioner.

The Commission's involvement in this area dates back to 1999 with the revelation that the teen-aged shooters at Columbine High School had been infatuated with extremely violent movies, music, and video games. This event led to Congressional and Presidential requests that the Commission investigate and report back on the practices of the movie, video game, and music recording industries with respect to the marketing of violent entertainment to children under 17. Since then, the Commission has issued five reports on the marketing of violent entertainment products. These reports have examined voluntary guidelines and industry codes that govern the placement of advertising for violent Restricted (R)-rated movies, Mature (M)-rated games, and Explicit-Content Labeled recordings in media popular with teens, and require the disclosure of rating and labeling information in advertising and on product packaging. Given that the focus of today's hearing is video games, I will limit most of my remarks to that industry, except to point out relevant comparisons.²

Over the years, the FTC reports have documented progress by the video game industry

² The Federal Trade Commission is the federal government's principal consumer protection agency. Congress has directed the Commission, under the FTC Act, to take action against "unfair or deceptive acts or practices" in almost all sectors of the economy and to promote vigorous competition in the marketplace. 15 U.S.C. § 45(a). With the exception of certain industries and activities, the FTC Act provides the Commission with broad investigative and enforcement authority over entities engaged in, or whose business affects, commerce. The FTC Act also authorizes the Commission to conduct studies and collect information, and, in the public interest, to publish reports on the information it obtains. 15 U.S.C. §§ 46(b) and (f).

in limiting advertisements for M-rated games in popular teen media. The FTC also has found that the video game industry nearly always provides rating information in advertising.

Despite this progress, there remain a number of concerns relating to video games and how they are marketed. First and foremost, there is the question of the usefulness of the rating system widely used by the industry. It is critically important that parents know about and use the Entertainment Software Rating Board (“ESRB”)³ ratings and content descriptors⁴ when choosing games for their children. Content descriptors – such as *Blood & Gore*, *Strong Language*, *Strong Sexual Content*, and *Violence* – which can be found on the back of the game box, help inform parents about the game’s content.

In addition, it is important that parents understand that game content, especially on PC games, can be modified or changed through modifications or “mods” that are widely available on the Internet. Often these modifications are developed by third-party game enthusiasts with no connection to the video game companies. If downloaded and made part of a game, they can add additional content, ranging from simple additions like a different color car used in a street scene,

³ As indicated on its website, the ESRB is a “self-regulatory body established in 1994 by the Entertainment Software Association (“ESA”). The ESRB independently assigns computer and video game content ratings, enforces industry-adopted advertising guidelines and helps ensure responsible online privacy practices for the interactive entertainment software industry.” <http://www.esrb.org/about/index.jsp>.

⁴ The ESRB ratings have two parts: 1) rating symbols that suggest what age group the game is appropriate for; and 2) content descriptors that indicate elements in a game that may have triggered a particular rating and/or may be of interest or concern. The ESRB system consists of the following rating symbols: EC (Early Childhood), E (Everyone), E10+ (Everyone 10 and older), T (Teen), M (Mature 17+), and AO (Adults Only 18+). There are more than thirty different content descriptors, including Blood and Gore, Intense Violence, Lyrics, Mature Humor, Mild Violence, Nudity, Sexual Themes, Strong Language, Strong Sexual Content, Use of Drugs, and Violence. See *ESRB Game Ratings & Descriptor Guide*, available at http://www.esrb.org/ratings/ratings_guide.jsp.

to superimposing new textures or skins on a figure in a game. Many of the mods would likely be of little concern to parents, but others add nudity or enhance the violence or depictions of blood in a game. In light of the easy availability of these “mods,” the Commission, in July 2005, issued a Consumer Alert on the video game rating system that highlights for parents the fact that content can be downloaded from the Internet that has not been evaluated by the ESRB and may make a game’s content more explicit than the rating indicates.⁵

⁵ See FTC Consumer Alert: Video Games: Reading the Ratings on Games People Play (July 2005), available at <http://www.ftc.gov/bcp/online/pubs/alerts/videoalrt.htm>. The Consumer Alert also explains how to decode ESRB’s descriptors and provides parents with certain tips, such as “Adults who are concerned about the content of certain games may want to check them out by renting and playing them before giving the nod to youngsters in their household” and that parents can use the ESRB’s website to “enter the name of a game to see its rating and the descriptions of its content.” This alert and other information useful for parents on the ratings systems for video games, movie and music are also available on the Commission’s webpage on “entertainment ratings,” available at <http://www.ftc.gov/bcp/online/edcams/ratings/ratings.htm>.

Similarly, parents need to be concerned about game developers leaving otherwise unplayable content on a game disc that is later made playable by patches or programs developed by third-party modders. The Commission recently investigated this very issue, culminating last week in an announcement that the Commission had accepted for public comment a consent agreement relating to alleged deception in the marketing of *Grand Theft Auto: San Andreas* and the release on the Internet of the so-called “Hot-Coffee” program that, if downloaded and installed, made playable a sex mini-game.⁶

The Commission also has expressed concerns regarding how readily children can buy M-rated video games in stores. Although retailers selling video games have steadily improved their record of denying under-age children access to M-rated games, a significant percentage of children sent in as undercover shoppers are still able to buy these games. Moreover, children are often exposed to advertising for these products. As is the case with the movie and music industries, existing voluntary guidelines for the video game industry still would permit M-rated ad placements in media that are very popular with large numbers of teens. In the past, all three industries have placed ads for M-rated, R-rated, or labeled products on television programs that are, according to Nielsen rankings, among the most popular shows watched by teens, yet still fall within industry placement guidelines.

⁶ See *Makers of Grand Theft Auto: San Andreas Settle FTC Charges* FTC Alleged Companies Game Content Claims Deceptive, available at <http://www.ftc.gov/opa/2006/06/grandtheftauto.htm>. The comment period ends on July 10, 2006.

Because the expressive content in video games has been considered protected speech under the First Amendment,⁷ there is a very narrow range of permissible government involvement with their advertising and marketing. As the industry continues to produce games with increasingly explicit content, it becomes even more incumbent upon industry to enforce and enhance its self-regulatory guidelines governing marketing, and upon retailers to implement and enforce policies restricting children's access to Mature-rated games.

II. The Commission's Studies

A. Scope of the Studies

⁷ E.g., *Interactive Digital Software Ass'n v. St. Louis County, Mo.*, 329 F.3d 954, 957-58 (8th Cir. 2003); *James v. Meow Media, Inc.*, 300 F.3d 683, 696 (6th Cir. 2002).

As stated earlier, the Commission has issued five reports on the self-regulatory and marketing practices concerning violent entertainment by the movie, music, and video game industries.⁸ In the course of preparing these reports, the Commission staff requested information from the principal industry trade associations, as well as from major motion picture studios, music recording companies, and video game companies.⁹ In addition, the Commission staff contacted interested government agencies, medical associations, academics, and parent and consumer advocacy groups.¹⁰ The Commission collected information from consumers through publicly available surveys and polls and also designed and conducted its own research. In addition, the Commission has conducted four “mystery” shopper surveys of retail stores and movie theaters in an attempt to see if unaccompanied children could purchase or gain access to products labeled as inappropriate or warranting parental guidance. Finally, the Commission staff reviewed Internet sites to study how they are used to market and provide direct access to rated or

⁸ The Department of Justice provided the FTC with substantial funding and technical assistance to enable the FTC to collect and analyze public and non-public information about the industries advertising and marketing policies and procedures, and to prepare the Commission’s written Reports. The analysis and conclusions contained in these reports are those of the FTC.

⁹ The Commission received information from numerous individual companies, as well as the Motion Picture Association of America (“MPAA”), the National Association of Theatre Owners (“NATO”), the Recording Industry Association of America (“RIAA”), the National Association of Recording Merchandisers (“NARM”), the Entertainment Software Rating Board (“ESRB”), the Video Software Dealers Association (“VSDA”), the Interactive Digital Software Association (“IDSA”), the Interactive Entertainment Merchants Association (“IEMA”), and the American Amusement Machine Association (“AAMA”).

¹⁰ Among those organizations were the American Academy of Pediatrics, American Psychological Association, Center on Media Education, Center on Media and Public Affairs, Children Now, Commercial Alert, The Lion & Lamb Project, Mediascope, National Institute on Media and the Family, National PTA, and Parents’ Music Resource Center.

labeled products.

B. Findings of the Commission's First Report

In September 2000, the Federal Trade Commission issued its first report entitled, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* ("September 2000 Report").¹¹ That report found that the three entertainment industries had engaged in widespread marketing of violent movies, music, and video games to children that was inconsistent with the cautionary messages of their own parental advisories and that undermined parents' attempts to make informed decisions about their children's exposure to violent content. In addition, the Commission found that advertisements for such products frequently failed to contain rating information.

¹¹ The Commission's September 2000 Report is available online at: <http://www.ftc.gov/reports/violence/vioreport.pdf>.

The Commission also conducted national telephone surveys of parents and children on their familiarity and use of the ratings and parental advisories. With respect to video games, our survey in 2000 found that only 61% of parents were aware of the ESRB system, and that 45% of those parents reported that they rarely or never used the ESRB system.¹²

Finally, the Commission reported on the results of an undercover mystery shop by unaccompanied teens, aged between 13 and 16, of retailers and movie theaters. In our 2000 survey, 85% of the unaccompanied young teens bought M-rated video games and parental advisory-labeled music recordings and 46% purchased tickets for an R-rated movie.¹³

The September 2000 Report recommended that all three industries – with respect to products that they themselves rate or label with age restrictions or parental advisories due to their violent content – enhance their self-regulatory efforts by: 1) establishing or expanding codes that prohibit target marketing these products to children and imposing sanctions for violations; 2) increasing compliance at the retail level; and 3) increasing parental understanding of the ratings and labels.

C. Findings of the Commission’s Follow-Up Reports in 2001

¹² See September 2000 Report, Appendix F at 8, <http://www.ftc.gov/reports/violence/appendicesviorpt.pdf>. Appendix F also contains a detailed discussion of the underlying methodology and findings.

¹³ See *id.*

In response to Congressional requests, the FTC released follow-up reports in April and December 2001.¹⁴ Both reports examined the entertainment industry's practices with regard to marketing violent entertainment products to children. These reports noted progress by the video game industry, as well as the movie industry, in providing clear and conspicuous disclosure of rating information in advertising, as well as new efforts by both industries to limit advertising for M-rated games and R-rated movies in popular teen media venues. The reports also found that the music industry showed virtually no change in its placement of parental advisory-labeled music ads since the September 2000 Report.

The results of the Commission's second undercover shopper survey were included in the December 2001 Report. The video game retailers showed modest improvement from the results in the Commission's undercover survey in 2000, with 78% of the unaccompanied young teens able to buy the product; the movie theaters showed no statistically significant change, with 48% able to buy a ticket to an R-rated movie as compared to 46% in 2000. The music industry had the worst results, with 90% of shoppers able to buy music recordings with an explicit-content

¹⁴ *Marketing Violent Entertainment to Children: A Six-Month Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* ("April 2001 Report"). The Commission's April 2001 Report is available online at: <http://www.ftc.gov/reports/violence/violence010423.pdf>. *Marketing Violent Entertainment to Children: A One-Year Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* ("December 2001 Report"). The Commission's December 2001 Report is available online at: <http://www.ftc.gov/os/2001/12/violencereport1.pdf>.

label, not a statistically significant change from the 85% result obtained in the Commission's 2000 shop.

D. Findings of the Commission's June 2002 Report

The Commission's next report, issued in June 2002,¹⁵ showed continued progress by the movie and video game industries and improvement by the music industry in including rating information in advertising that would help parents identify material that may be inappropriate for their children. In the case of video games, the Commission found nearly universal compliance with ESRB standards limiting the advertising of M-rated games in media where children constitute a certain percentage of the audience (35% for television and 45% for print media). Nonetheless, the Commission found that some industry members had placed advertisements for M-rated games on television shows popular with teens, and in youth-oriented game-enthusiast magazines. As the Commission noted in its December 2001 Report, the industry's anti-targeting standards diminished – but did not eliminate – advertisements during programs mainly popular with teens.

E. 2003 Workshop on Industry Marketing Practices

¹⁵ *Marketing Violent Entertainment to Children: A Twenty-One Month Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* ("June 2002 Report"). The Commission's June 2002 Report is available online at: <http://www.ftc.gov/reports/violence/mvecrpt0206.pdf>.

In October 2003, the Commission held a public workshop on industry marketing and retail sales practices. At the workshop, representatives from consumer and parents' groups, as well as the motion picture, video game, and music recording industries' major trade and retailer associations discussed and debated the state of self-regulation in each of these industries. A summary of the workshop appears in the Commission's July 2004 report.¹⁶ Significantly, one positive outgrowth of that workshop was an announcement by the trade group representing video game retailers that they would step up their efforts to restrict sales of M-rated games to children, and by the end of 2004 would have in place an enhanced system to deter such sales.¹⁷ Based upon the results of the Commission's most recent mystery shop (*see* Section II. G., *infra*), it appears that game retailer members have adopted policies to restrict such sales but need to do more to ensure that such policies are being enforced.

F. Findings of the Commission's July 2004 Report

The Commission's July 2004 Report found substantial, but not universal, compliance with ESRB standards governing ad placements and found that industry participants generally were prominently disclosing rating information in advertising and on product packaging. The report further found that ads for M-rated games continued to appear in game enthusiast magazines popular with teens, and that Teen (T)-rated games were advertised in media popular with pre-teens (children under 13). The Commission recommended that the video game

¹⁶ *Marketing Violent Entertainment to Children: A Fourth Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* ("July 2004 Report"). The Commission's July 2004 Report is available online at: <http://www.ftc.gov/os/2004/07/040708kidsviolencerpt.pdf>.

¹⁷ *See* Major Retailers Announce New Campaign to Enforce Video Game Rating System, available at <http://releases.usnewswire.com/printing.asp?id=24172> (Dec. 8, 2003).

industry, as well as the movie and music industries, improve their efforts to avoid advertising restricted or labeled products in venues popular with under-17 audiences. The report also noted that the game industry could improve its efforts to disclose rating information, by including content descriptors in TV ads and on the front of game packages.

The report discussed the results of a mystery shopper survey of retailers conducted on the Commission's behalf in 2003. This survey found that 69% of young teen shoppers (age 13–16) were able to buy Mature-rated games, reflecting some improvement from earlier undercover shopping surveys conducted in 2000 and 2001. However, the survey also revealed that retailers still far too often were selling such games to children. The report encouraged retailers to do a better job disclosing ratings and reasons for ratings in advertising, and to more widely implement and enforce sales policies restricting children's access to restricted or labeled entertainment media, and, in particular, R-rated DVDs and homes videos, music with a parental advisory, and M-rated games.

G. Latest Mystery Shop Results

On March 30 of this year, the Commission released the results of its latest nationwide undercover shop of video game stores.¹⁸ The undercover shop saw a substantial decrease in the number of M-Rated video games sold to unaccompanied children, particularly by large retailers. Forty-two percent of the secret shoppers – children between the ages of 13 and 16 – who attempted to buy an M-rated video game without a parent were able to purchase one, compared to 69% of the shoppers in 2003. Notably, large retailers performed better - 35% of the secret

¹⁸ See Undercover Shop Finds Decrease in Sales of M-Rated Video Games to Children, available at <http://www.ftc.gov/opa/2006/03/videogameshop.htm>.

shoppers were able to buy the M-rated games. While these results are headed in the right direction, there is still substantial room for improvement. The Commission staff currently is conducting another undercover shop to test whether children under age 17 are able to buy tickets to R-rated films at movie theaters, R-rated movies on DVD, explicit-content labeled music recordings, and M-rated video games.

III. The Commission's Ongoing Activities

A. Survey Research and Ad Monitoring

The Commission staff is currently conducting research for a new report on entertainment industry practices. Among other things, the Commission staff will be surveying consumers on the video game rating system. The surveys are a follow-up to the Commission's surveys in 2000 on consumers' familiarity with and use of the ESRB video game rating system. Because parents' knowledge of and ability to use the rating system is a key factor, the Commission intends to survey both parents and children to find out, among other things, whether parental participation in the selection and purchase of video games has changed since the 2000 survey, whether parental knowledge and use of the ESRB system has changed, and what parents' level of agreement is with the ESRB ratings for games they have personally encountered through purchase or play with their children. The Commission plans to survey 1,000 parents who have one or more children, aged eight to 16, who play video games or personal computer games.¹⁹ The FTC will also survey 500 children aged eight to 16 who play video or personal computer

¹⁹ On March 30, the FTC published the second of two Paperwork Reduction Act notices seeking public comment on proposed consumer surveys on the video game rating system. *See* 71 Fed. Reg. 16155 (Mar. 30, 2006); 70 Fed. Reg. 56703 (Sep. 28, 2005).

games.

The Commission staff continues to monitor the industry's advertising practices for disclosure of rating information and for the placement of ads for M-rated games, R-rated movies, and music with a parental advisory in media popular with children. As part of this monitoring, the FTC surfs web sites to study the disclosure of ratings information and methods used to preclude the sale of restricted or labeled products to children under 17.

The Commission plans to release a report near the end of this year summarizing the results of these additional surveys and monitoring activities.

B. Collection of Media Violence Complaints

On March 17, 2004, the Commission announced an expansion of its consumer complaint handling system to categorize and track complaints about media violence, including complaints about the advertising, marketing, and sale of violent movies, video games, and music.²⁰ To make it easier for consumers to file a complaint, the Commission's home page - www.FTC.gov - contains a link to the complaint form. The expanded complaint system, implemented in response to Congressional directives, enables the Commission to track consumer complaints about media violence and identify issues of particular concern to consumers. To date, the Commission has received over 1,200 complaints.²¹

C. Law Enforcement Activities

²⁰ See FTC to Accept Complaints about Media Violence (Mar. 17, 2004), available at <http://www.ftc.gov/opa/2004/03/mediaviolence.htm>.

²¹ About 60% of these complaints grew out of a coordinated campaign that encouraged parents to complain about the marketing of a toy to young children that was based on a violent TV program.

The Commission has completed its investigation into the marketing of the video game *Grand Theft Auto: San Andreas*, having reviewed tens of thousands of documents and the deposition testimony of numerous company officials. As noted earlier, the Commission has accepted for public comment a consent agreement with the developers of *San Andreas* to address alleged deception in the marketing of that game.²²

The ESRB originally rated *Grand Theft Auto: San Andreas* M (Mature 17+), indicating that the game has content that may be suitable for persons ages 17 and older. As part of the rating, the ESRB had assigned the game the following content descriptors: Blood and Gore, Intense Violence, Strong Language, Strong Sexual Content, and Use of Drugs.

²² A “censor flag” that preceded the sex mini-game script code on the game disc acted as a kind of wrapper for that content. When installed, the Hot Coffee program changed that censor flag from a 1 to a 0 at the relevant point in the script code, effectively unwrapping the sex mini-game.

In July 2005, after media reports of a widely available “mod,” the ESRB found that the game discs for the originally released PC, PlayStation 2, and Xbox versions of *San Andreas* contained unused nude female textures (“skins”) and a sexually explicit mini-game that had been edited out of game play but was embedded in wrapped form in the game’s computer code²³. Users of the originally released PC version of the game could access this content by downloading and installing a third-party program called “Hot Coffee.” Later, PlayStation 2 and Xbox users were able to access the same content by taking certain affirmative steps, such as installing special software and/or hardware accessories on their game consoles.

According to the ESRB, its initial rating of *San Andreas* was seriously undermined by the existence of the undisclosed and highly pertinent content on the final game discs, compounded by the broad distribution of the Hot Coffee program.²⁴ The ESRB therefore re-rated the game as AO (Adults Only 18+), indicating that the game has content that should only be played by persons 18 and older. The ESRB also assigned the game an additional content descriptor for nudity.

²⁴ See ESRB Concludes Investigation into *Grand Theft Auto: San Andreas*; Revokes M (Mature) Rating (July 20, 2005), available at <http://www.esrb.org/about/news/7202005.jsp>.

Major retailers, most of whom have policies not to sell AO-rated games, promptly removed the original versions of *San Andreas* from their store shelves. Take-Two Interactive, Inc., the game's publisher, agreed to offer retailers the option of either re-stickering existing inventory with an AO (Adults Only 18+) rating or exchanging all unsold inventory for new, M-rated versions of the game with the Hot Coffee content removed.²⁵ Take-Two also agreed to make a downloadable patch available to all consumers who had previously purchased the PC version of the game, which would make the Hot Coffee program inoperable.

The ESRB clarified its rules to clearly require all game companies to disclose any pertinent content that might impact the rating contained on the game discs sold to the public, even if that content is not intended to be accessed during game play. The ESRB also has stated publicly that it intends to increase the fines available for companies who fail to disclose pertinent content during the rating process to as much as \$1,000,000.²⁶

Undisclosed explicit content in video games is obviously a matter of serious concern. Parents must be able to rely on the accuracy of the industry rating system. Practices, whether by game manufacturers or a third party, that undermine the integrity of this system need to be addressed.

²⁵ Take-Two reported that it incurred \$24.5 million in costs associated with returns of *San Andreas* as a result of the re-rating. See Take-Two Interactive Software, Inc., Annual Report (Form 10-K), at 24 n.6 (Jan. 31, 2006).

²⁶ However, these increased fines are not yet in effect.

In the instance of *San Andreas*, the Commission believes that its developers bear responsibility for what occurred, having created the content that was ultimately made playable by the “Hot Coffee” program.²⁷ Accordingly, the Commission last week published a complaint and accepted for public comment a settlement with Take-Two Interactive and Rockstar Games that seeks to ensure that such events not happen again. The agreement, if made final following a 30-day comment period, would require the companies to make disclosures in their advertising and marketing whenever they include content on a game, whether playable or not, that would likely affect the rating for the game, unless they have disclosed that content to the ESRB or other applicable rating authority. In addition, the agreement includes a requirement that the companies not misrepresent the rating or content descriptors for a game, and implement and maintain a system reasonably designed to ensure that all of the content of a game is considered when the companies prepare a submission for the ESRB or other rating authority.²⁸

The Commission believes that last weeks’ action complements the steps the ESRB has already taken. Importantly, it also makes clear that companies owe an obligation to the public,

²⁷ The July 25, 2005, resolution of the U.S. House of Representatives asking the Commission to investigate the marketing of *Grand Theft Auto: San Andreas* requested the FTC to determine if the companies had intentionally deceived the ESRB. H. Res. 376 (July 25, 2006). The Commission’s published complaint contains no allegation that the companies intentionally misled the ESRB as to the content of the game when they submitted the game for a rating. Indeed, the relatively unpolished production qualities of the enabled mini-game, as well as technical bugs that arose in the game when the first version of the “Hot Coffee” program was released, show that the companies had abandoned development of that content before finishing it.

²⁸ A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of \$11,000.

independent of their obligations to the ESRB, not to misrepresent the content that might become accessible on a video game.

IV. Conclusion

The Commission's follow-up reports have documented progress by the video game industry in complying with and improving its self-regulatory policies restricting ad placements and requiring rating information in advertising. More remains to be done.

Because of First Amendment and other issues, the Commission continues to support private sector initiatives by industry and individual companies to implement the suggestions mentioned above. Nonetheless, the Commission will continue to monitor closely developments in the area and will initiate actions, such as the case challenging the marketing of *San Andreas*, when appropriate.